IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Confirmation No. 8624
John J. Sie et al.	Examiner: Anil Khatrl
Application No.: 09/687,157	Technology Center/Art Unit: 2191
Filed: October 12, 2000	APPELLANTS' BRIEF UNDER 37 CFR §41.37
For: LOCAL STORAGE OF PROGRAMS	

Via EFS-Web
Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

       Further to the Notice of Appeal mailed on October 18, 2006 for the above-referenced application, Appellants submit this Appeal Brief.

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1. REAL PARTY IN INTEREST

Privately held Starz Entertainment Group is the real party in interest of the above-identified application. Starz Entertainment Group is controlled by Liberty Media Corporation, a publicly-traded entity.

2. RELATED APPEALS AND INTERFERENCES

No other appeals or interferences are known that will directly affect, are directly affected by, or have a bearing on the Board decision in this appeal.

3. STATUS OF CLAIMS

Claims 1, 2, 4-15 and 17-22 are currently pending in this application. All pending claims stand finally rejected pursuant to a Final Office Action mailed July 18, 2006. The rejection of claims 1, 2, 4-15 and 17-22 is believed to be improper and is the subject of this appeal. A copy of the claims as rejected is attached as **9. Claims Appendix**.

4. STATUS OF AMENDMENTS

The claims have been amended four times in this case. More specifically, claim 9 was amended to correct an informality in an amendment filed March 22, 2004 in response to the Office Action mailed February 11, 2004. Next, claims 1, 2, 8, 14, and 15 were amended, claims 3 and 16 were canceled and claims 21 and 22 were added in an amendment filed with a Request for Continued Examination on January 31, 2005 in response to the Final Office Action mailed June 1, 2004 and the Advisory Action mailed November 19, 2004. Subsequently, claims 1 and 14 were amended in an amendment filed June 4, 2005 in response to the Office Action mailed March 29, 2005. Finally, claims 1, 2, 4-15, and 17-22 were amended in an amendment filed with

a Request for Continued Examination on January 13, 2006 in response to the Final Office Action

mailed August 3, 2005 and the Advisory Action mailed October 21, 2005.

5. SUMMARY OF CLAIMED SUBJECT MATTER

The invention generally relates to delivering content programs from a content

distributor to a user's location. Application, page 1, lines 23-24. The embodiment of claim 1

relates to a method for distributing content sent by a content distributor to a user location. Id. at

page 2, lines 9-11. The method of this embodiment includes receiving a command from the

content distributor to store the content at the user location. Id. at page 2, lines 11-12, page 7,

lines 11-13, page 8, lines 31-33, and page 26, lines 1-5 and 24. The command is received before

a user specifically requests the content. Id. at page 2, lines 12-15, FIG. 10B, page 22, line 27 -

page 23, line 20. The content comprises at least one of a video program or an audio program.

Id. at page 28, lines 4-5. The command sent from a remote location is processed with respect to

the user location. Id. at page 2, lines 11-12 and page 26, lines 1-5. The content is received at the

user location. Id. at page 2, lines 12-13, page 22, line 33 - page 23, line 4. The content is stored

at the user location in response to at least the processing the command. Id. at page 2, lines 13-

14, page 23, lines 5-7, page 26, lines 1-5. A user action related to the content is detected after

storage of the content. Id. at page 2, lines 14-15, page 23, lines 8-10.

The embodiment of claim 8 relates to a method for distributing a content sent by a

content distributor to a user location. Id. at page 2, lines 9-11. The method of this embodiment

includes commanding the user location to store the content from the content distributor. Id. at

page 2, lines 11-12, page 7, lines 11-13, page 8, lines 31-33, and page 26, lines 1-5 and 24. The

user location is commanded to store the content without a user associated with the user location

specifically requesting the content. Id. at page 2, lines 12-15, FIG. 10B, page 22, line 27 - page

23, line 20. The content is stored proximate to the user location. Id. at page 2, lines 13-14, page

23, lines 5-7, and page 28, lines 18-23. The content distributor is remotely-located from the user

location. Id. at page 4, line 23 - page 7, line 32, FIGs. 1-4, and page 28, lines 5-8. The content is

sent to the user location for storage before a user specifically requests the content. Id. at page 2, lines 12-15, page 22, line 27 - page 23, line 20, and FIG. 10B. The content comprises at least one of a video program or an audio program. Id. at page 28, lines 4-5.

The embodiment of claim 14 relates to a distribution program product for distributing a content sent by a content distributor to a user location. Id. at page 4, lines 11-12. The distribution program product comprises code for receiving a command from the content distributor to store the content at the user location before a user specifically requests the content. Id. at page 2, lines 11-15, page 7, lines 11-13, page 8, lines 31-33, page 22, line 27 - page 23, line 20, FIG. 10B, and page 26, lines 1-5 and 24. The content comprises at least one of a video program or an audio program. Id. at page 28, lines 4-5. The distribution program product also comprises code for processing the command sent from a remote location with respect to the user location. Id. at page 2, lines 11-12 and page 26, lines 1-5. There is also code for receiving the content at the user location and code for storing the content at the user location in response to at least the processing the command. Id. at page 2, lines 12-14, page 22, line 33 - page 23, line 7, and page 26, lines 1-5. The distribution program product also comprises code for detecting a user request for the content after storage of the content. Id. at page 2, lines 14-15, page 23, lines 8-10. A computer-readable medium stores the codes. Id. at page 4, lines 11-12.

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 2, 4-15, and 17-22 stand rejected under 35 U.S.C. §102(a) as being unpatentable over Kalva et al., "Techniques for Improving the Capacity of Video on Demand Systems", Proceedings of the 29th Annual International Conference on System Science, IEEE 1996, pp. 308-315 (hereinafter "Kalva").

7. ARGUMENT

A. Whether claims 1, 2, 4-15, and 17-22 are anticipated by Kalva

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP 2131 citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Applicants respectfully submit that Kalva fails to disclose each and every claimed element. For example, Kalva fails to disclose, either expressly or inherently, commanding the end device to store content, i.e., a video or audio program, before a user specifically requests the content.

Kalva is directed to combining segmentation, i.e., dividing a video into several fixed length segments for transmission, with multicasting, i.e., sending the same video segment to multiple subscribers simultaneously, in a video-on-demand system. (Abstract, page 308) However, Kalva does not disclose commanding an end device to store content, i.e., a video or audio program, before a user specifically requests the content. Rather, under Kalva, it is only after the user specifically requests content that the segments are downloaded to the users location. For example, see page 310 third paragraph lines 4 and 5 ("The control connection that exists between the user and the server at the head-end is used to request videos"), page 310 fourth paragraph lines 8-17 ("there is a possibility that more that one user requests the same video" and "popular videos are requested by many users" and "if a requested video is multicast"), and page 310 fifth paragraph lines 1-3 ("a video is multicast to users who request the video"), all indicating that the video segments are downloaded after they are requested by the user.

Also, see page 311 figure 4 and the following three paragraphs. As indicated in figure 4, the segments are multicast only after users request the video. For example, "users 1 and 2 request a video at the same time (t=0) and the movie is multicast to them" AFTER t=0. (See

page 311, para. 2, lines 1 and 2) Kalva goes on to state "if Sn is the number of segments that can

be buffered at users' premises, for partial multicasting to be possible, **the video has to be**

requested before segment number Sn is transmitted." (page 311, para. 4, lines 1-4, emphasis

added)

In response to this argument, the Final Office Action interpreted Kalva as

suggesting "stor[ing] [content] before user[s] specifically request the content." In order to

support this interpretation, the Final Office Action cited two portions of Kalva. The first portion

has been more fully reproduced below:

> "The **users request videos** from the server at head end. . . . The requests are
> served on a first-come-first-served basis and are not queued. **When a request is**
> **accepted, a channel is [then] reserved for the connection** for the entire duration
> of the video. . . . In addition to these assumptions **we further assume** that: User
> has a limited buffer so that video can be pre-delivered." (Page 309, column 1,
> line 46 to column 2, line 16, emphasis added)

It appears that the Final Office Action hinged on the word "pre-delivered" without

realizing that it is a further assumption after users have already requested videos. Clearly, "pre-

delivered" here cannot mean "delivered before user request."   In other words, the sequence in

Kalva cannot be (1) video delivery, (2) user request, and (3) viewing.

Rather, the sequence in Kalva is (1) user request, (2) video delivery, and (3)

viewing. Only this sequence is consistent with the cited portion. For example, the sentence

"When a request is accepted, a channel is [then] reserved for the connection for the entire

duration of the video" indicates the sequence (1) user request and (1.5) reserving a delivery

channel. Only after (1.5) reserving a delivery channel can (2) video delivery begin. In

other words, without reserving a delivery channel, video cannot be delivered; without user

request, a delivery channel cannot be reserved. Thus, (1) user request must occur before (2)

video delivery.

Consequently, the Final Office Action's interpretation of "pre-delivered" as meaning "delivered before user request" is clearly inconsistent with the sequence in Kalva. Rather, because the rest of the sequence is (2) video delivery and (3) viewing, "pre-delivered" should be interpreted as "delivered before viewing."

The second portion that the Final Office Action cited has also been more fully reproduced below:

> "If Sn is the number of segments that can be buffered at user' premises, for partial multicasting to be possible, the video has to be **requested before segment number Sn is transmitted** in the current session." (Page 311, column 1, last paragraph, emphasis added)

Thus, the completed sentence in fact supports the sequence (1) user request and (2) video delivery, which is the converse of (1) video delivery and (2) user request as interpreted by the Final Office Action.

Therefore, Kalva does not disclose commanding an end device to store content, i.e., a video or audio program, before a user specifically requests the content. Rather, under Kalva, only after a user requests content is the content delivered to the user's location.

Claim 1, upon which claims 2, 4-7, and 21-22 depend, is directed to a method for distributing content sent by a content distributor to a user location. Claim 14, upon which claims 15 and 17-20 depend, is directed to a distribution program product having code for distributing content sent by a content distributor to a user location. Both claim 1 and claim 14 recite in part "receiving a command from the content distributor to store the content at the user location before a user specifically requests the content, wherein the content comprises at least one of a video program or an audio program." Kalva does not disclose receiving a command from the content distributor to store content, i.e., a video or audio program, at the user location before a user specifically requests the content. Rather, Kalva teaches delivering content only after a user
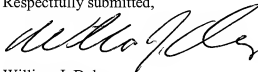
requests the content from a content distributor. For at least these reasons, claims 1-2, 4-7, 14-15, and 17-22 are distinguishable from Kalva and should be allowed.

Claim 8, upon which claims 9-13 depend, is directed to a method for distributing content sent by a content distributor to a user location and recites in part "commanding the user location to store the content from the content distributor without a user associated with the user location specifically requesting the content" and "sending the content to the user location for storage before a user specifically requests the, wherein the content comprises at least one of a video program or an audio program." Kalva does not disclose commanding the user location to store the content from the content distributor without a user associated with the user location specifically requesting the content or sending the content to the user location for storage before a user specifically requests the content. Rather, Kalva teaches delivering content only after a user requests the content from a content distributor. For at least these reasons, claims 8-13 are distinguishable from Kalva and should be allowed.

8. CONCLUSION

For these reasons, it is respectfully submitted that the rejection should be reversed.

Respectfully submitted,

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9. CLAIMS APPENDIX

        1.   (Previously Presented) A method for distributing content sent by a content distributor to a user location, the method comprising:

        receiving a command from the content distributor to store the content at the user location before a user specifically requests the content, wherein the content comprises at least one of a video program or an audio program;

        processing the command sent from a remote location with respect to the user location;

        receiving the content at the user location;

        storing the content at the user location in response to at least the processing command; and

        detecting a user action related to the content after storage of the content.

        2.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 1, wherein the content comprises at least one of a commercial, an infomercial, a show, or a movie.

        3.   (Canceled)

        4.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 1, wherein the user location comprises a set top box.

        5.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 1, wherein the storing the content comprises storing the content on a mass storage device associated with a set top box that is associated with the user location.

6.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 1, further comprising:

determining a subset of content from a linear schedule of content associated with the content distributor; and

transmitting the subset to the user location.

7.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 1, wherein the processing the command comprises determining usage rules related to the content.

8.   (Previously Presented) A method for distributing a content sent by a content distributor to a user location, the method comprising:

commanding the user location to store the content from the content distributor without a user associated with the user location specifically requesting the content, wherein:

the content is stored proximate to the user location, and

the content distributor is remotely-located from the user location; and

sending the content to the user location for storage before a user specifically requests the content, wherein the content comprises at least one of a video program or an audio program.

9.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 8, further comprising a step of determining a subset of content from a larger set of content, wherein the content is included in the subset.

10.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 8, further comprising determining usage rules for the content.

11.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 8, further comprising sending usage rules for the content to the user location.

12.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 8, wherein the content is unmentioned in a linear schedule.

13.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 8, further comprising broadcasting the content to a plurality of user locations.

14.   (Previously Presented) A distribution program product for distributing a content sent by a content distributor to a user location, the distribution program product comprising:

code for receiving a command from the content distributor to store the content at the user location before a user specifically requests the content, wherein the content comprises at least one of a video program or an audio program;

code for processing the command sent from a remote location with respect to the user location;

code for receiving the content at the user location;

code for storing the content at the user location in response to at least the processing the command;

code for detecting a user request for the content after storage of the content; and

a computer-readable medium for storing the codes.

15.   (Previously Presented) The distribution program product for distributing the content sent by the content distributor to the user location as recited in claim 14, wherein the content comprises at least one of a commercial, an infomercial, a reoccurring show, or a movie.

16.   (Canceled)

17.   (Previously Presented) The distribution program product for distributing the content sent by the content distributor to the user location as recited in claim 14, wherein the user location comprises a set top box.

18.   (Previously Presented) The distribution program product for distributing the content sent by the content distributor to the user location as recited in claim 14, wherein the code for storing the content comprises code for storing the content on a mass storage device associated with a set top box that is associated with the user location.

19.   (Previously Presented) The distribution program product for distributing the content sent by the content distributor to the user location as recited in claim 14, further comprising:
       code for determining a subset of content from a linear schedule of content associated with the content distributor; and
       code for transmitting the subset to the user location.

20.   (Previously Presented) The distribution program product for distributing the content sent by the content distributor to the user location as recited in claim 14, wherein the code for processing the command comprises code for determining usage rules related to the content.

21.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 1, wherein the content distributor sends the content from a remote point with respect to the user location.

22.   (Previously Presented) The method for distributing the content sent by the content distributor to the user location as recited in claim 1, wherein:
       the content is broadcast to a plurality of user locations,

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the broadcast is coextensive-in-time for the plurality of user locations, and
the user location is part of the plurality of user locations.

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10. EVIDENCE APPENDIX

None

11. RELATED PROCEEDINGS APPENDIX

None